IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

THURSDAY, THE 27TH SEPTEMBER 2007 / 5TH ASWINA 1929

WP(C).No. 29386 of 2006(W)

PETITIONER:

N.KANDAN KUTTY,
RETIRED TEACHER, "CHOHI",
VAIDYARANGADI, MALAPPURAM DISTRICT.

BY ADV. SRI.AVM.SALAHUDIN

RESPONDENTS:

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1. THE DISTRICT EDUCATIONAL OFFICER,
CIVIL STATION, MALAPPURAM.

2. THE MANAGER,
RAMANATTUKARA HIGH SCHOOL, VAIDYARANGADI,
RAMANATTUKARA, MALAPPURAM DISTRICT.

BY ADV. SRI.JACOB ABRAHAM
GOVERNMENT PLEADER SMT. M.R. SREELATHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27 /09 /2007 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXT.P1: TRUE COPY OF THE COMPLAINT DATED 10.1.2005 FILED BY THE PETITINER BEFORE THE D.E.O.

EXT.P2: TRUE COPY OF THE PETITION NO.1088/2005 DATED 30.4.2005 FILED BY THE PETITIONER BEFORE LOKAYUKTHA.

EXT.P3: TRUE COPY OF THE STATEMENT DATED 16.8.2005 FILED BY THE 2ND RESPONDENT BEFORE LOKAYUKTA.

EXT.P4: TRUE COPY OF THE STATEMENT DATED NIL FILED BY THE PETITIONER BEFORE LOKAYUKTA.

TRUE COPY

PA TO JUDGE.

S. SIRI JAGAN, J.

W.P.(C)No.29386 OF 2006

Dated this the 27th day of September, 2007

JUDGMENT

The petitioner is the senior most qualified teacher in the school managed by the 2nd respondent entitled to be promoted as Headmaster of the school. According to the petitioner, the petitioner was appointed as Headmaster from 1.4.2000 and he continued as Headmaster-in-charge till 31.5.2001 when he retired from service. The petitioner's contention is that his appointment has not been approved by the educational authorities. This situation arose because there was a dispute regarding the right to managership of the school. The same was resolved only by intervention of this Court in W.P.(C)No.9547/02 in which the 2nd respondent was directed to be approved as the manger of the school. Pursuant thereto, by order dated 10.7.03, the 2nd respondent was approved as the manager of the school with effect from 4.3.2001.

2. In the above circumstances, the petitioner seeks the following reliefs.

> "i) to issue a writ of mandamus or any other appropriate writ, order or direction directing the 2nd respondent to appoint the petitioner with effect from 1.4.2000 to 31.5.2001 regularise it and to approve the same by the 1st respondent.
>
> ii) to direct the respondents to pay the pensionary benefits to the petitioner by fixing his pay on the scale of headmaster of the school and to disburse the entire arrears of the same without delay.
>
> iii) to appoint the petitioner as Headmaster of the Ramanattukara High School, Vaidyarangadi with effect from 1.4.2000 to 31.5.2001 and declare that he is entitled to get all statutory benefits thereon".

3. The 1st respondent has filed a counter affidavit, paragraphs 6 and 7 of which read thus:

> "6. In Aided Schools, the appointments against vacancies are being done by the approved Manger. In the present case there was no approved Manager at the relevant point of time and Sri. Velayudhankutty Panicker's appointment as Manager of the school has been approved by this office for the period from 04.03.2004 to 03.03.2007 in compliance with the judgment in W.P.(c)no.9547/02. The new Manager can submit the proposal for approval of appointment of the petitioner in this office, supported by orders condoning the delay in submitting the proposal in this office within the time limit prescribed.

> 7. The retired Headmistress had handed over charge to the petitioner since he was the Senior most HSA to be promoted as Headmaster. But the approved Manger of the School is the Competent Authority to issue appointment orders. No appointment orders had been issued to the petitioner promoting his as Headmaster of the School, since the dispute regarding the Management of the school was pending before this Honourable Court. The appointment of Sri. Velayudhankutty Panicker as Manger of the School has been approved by this Office from 04.03.2004 to 03.03.2007, in compliance to directions contain in the judgment in W.P.(c)9547/02".

4. The 2nd respondent also does not dispute that the petitioner is qualified to hold the post of Headmaster of the school. His only contention is that he was not the manger of the school at the time when the alleged appointment has taken place and he disputes the very appointment itself. According to him, it may not be possible for him to issue an appointment order now with retrospective effect from 1.4.2000 since the petitioner's managership was approved only with effect from 4.3.2001, unless, of course, this Court so directs.

5. I have considered the rival contentions in detail. In the decision of this Court in **Sathinadan Vs. State of Kerala (2006(3) KLT 60)** (short note Case No.82), it has been held that non-appointment of manager of an aided school is not a reason to deny promotion to the post of Headmistress of the school. In this case for no fault of the petitioner, the petitioner's eligibility for appointment as Headmaster has not been duly considered and approved only for want of a proper manager for the school when the petitioner became entitled to be promoted as such. I do not think that the petitioner should suffer because of a dispute regarding the managership of the school. Now that a proper manager is there he can be directed to take appropriate steps in the matter.

6. In the above circumstances, the writ petition is disposed of with the following directions.

The 2nd respondent shall forward an appointment order appointing the petitioner as Headmaster of the school with effect from 1.4.2000 within three weeks from today. The 1st respondent shall approve the said appointment with

retrospective effect from 1.4.2000 and pass orders accordingly within two months from the date of receipt of a copy of this judgment. Consequent arrears of monetary benefits shall be disbursed to the petitioner and his retirement benefits shall also be computed and disbursed to the petitioner accordingly.

S. SIRI JAGAN, JUDGE

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